

CASE NO.: 2:20-cv-30-KAC-CRW

BVU's attachments to joint use poles owned by CenturyLink, and CenturyLink's attachments to joint use poles owned by BVU.

3. In March 2009, my job title at BVU became Manager of Network and Fiber Engineering. I worked for BVU in that role from March, 2009 to June, 2018. As BVU's Manager of Network and Fiber Engineering, I had primary responsibility and overall supervision of BVU's project to install and develop a fiber broadband network to provide internet services to BVU's customers. I continued to have responsibility for reviewing the pole attachment invoices from CenturyLink to BVU and approved the inter-division charges (cost allocations between BVU's electric division and its broadband division which was known as "BVU OptiNet").

4. Due to my duties and responsibilities as an employee of BVU for sixteen years, I have firsthand knowledge of the construction and operation of BVU's fiber broadband system from its initial stages in April 2002, through June, 2018, including the sale of BVU OptiNet to Sunset Digital Communications, a third party, in 2018. It is significant that the sale of BVU OptiNet to a third party, Sunset Digital, occurred in 2018, before the January 2019 Invoice that is attached to CenturyLink's Brief as Exhibit 1. I explain the significance of this more below.

5. Like BrightRidge, BVU is a local electric utility company on the TVA system.

6. At the time I was involved with the construction and operation of BVU's fiber broadband network, BVU had a Joint Use Pole Agreement with CenturyLink. As a result of my job duties with BVU, I was familiar with BVU's Joint Use Pole Agreement with CenturyLink. The BVU Joint Use Pole Agreement is nearly identical to the Agreement between BrightRidge and CenturyLink.

7. BVU (or its predecessor) began construction of its fiber broadband network in January 2002. The first residential customers received internet service from BVU in late 2002.

8. When BVU began installing its fiber broadband network in 2002, it placed its fiber attachments in the telephone space on joint use poles owned by CenturyLink, and joint use poles owned by BVU. BVU did not install its fiber broadband network in the electric space at the top of joint use poles. We understood that BVU had the right to attach its fiber broadband network in the telephone space of joint use poles owned by CenturyLink under its Joint Use Pole Agreement with CenturyLink.

9. During the period I was employed by BVU from April, 2002 – June, 2018, there were three joint pole audits performed by CenturyLink and BVU on the joint use poles in the BVU Service Territory. These audits made CenturyLink aware of BVU's attachments on CenturyLink's poles, including BVU's fiber broadband attachments in the telephone space on joint use poles owned by CenturyLink.

10. CenturyLink cooperated with BVU in BVU's construction and deployment of its fiber broadband system in the telephone space of joint use poles owned by CenturyLink (and those owned by BVU). The CenturyLink employee who my team dealt with when we worked for BVU was Marcy Buckles.

11. From 2002 to 2018, CenturyLink neither resisted nor objected to BVU's attachments in the telephone space of joint use poles owned by either party. CenturyLink also did not ask BVU to pay any additional fee for attachments in the telephone space beyond the per pole adjustment fee was already required by their Joint Use Pole Agreement. CenturyLink did not protest, assert BVU should pay a separate fee, or claim BVU's broadband attachments were trespassing, in breach of contract, or conversion, or that BVU was being unjustly enriched. On joint use poles owned by CenturyLink where BVU already had electric attachments, CenturyLink

never billed BVU for the extra fiber attachment in the telephone space because there was one attachment fee per pole, per year.

12. The January 29, 2019 Invoice Number PR1103 from BVU to CenturyLink, attached as Exhibit 1 to this Affidavit (the "January 2019 Invoice"), does not show that BVU's broadband division (known as BVU OptiNet) paid a separate, additional fee to attach its fiber in the telephone space of joint use poles owned by CenturyLink. As noted above, my duties as an employee at BVU included reviewing the pole attachment invoices for adjustment payments between BVU and CenturyLink. Based on my direct, firsthand knowledge of BVU's invoices to CenturyLink for adjustment payments, the January 2019 Invoice does not show that BVU OptiNet paid CenturyLink a separate attachment fee to attach in the telephone space of joint use poles owned by CenturyLink. Rather, the January 2019 Invoice shows adjustment payments for three different attachment scenarios:

- (a) Joint use poles owned by BVU on which CenturyLink had attachments – 7,286 poles;
- (b) Joint use poles owned by CenturyLink on which BVU had electric *or* electric and fiber attachments – 2,709 poles (one fee per pole for all attachments); and
- (c) Joint use poles owned by CenturyLink on which BVU had only fiber attachments – 88 poles.

The 88 poles in the third category of the January 2019 Invoice are joint use poles on which BVU had fiber attachments *only* and no electric attachments. The majority of these poles were near Abingdon, Virginia, outside of BVU's electric service territory where BVU did not provide electric service. We reported these "fiber-only" joint use poles under the annual Joint-Use adjustment calculation because we understood that the existing Joint Use Pole Agreement between BVU and CenturyLink covered both attachment types. For the remaining 2,700 poles on which BVU had

electric attachments, or *both* electric attachments in the electric space *and* fiber attachments in the telephone space, BVU made only one adjustment payment per pole, even though it had attachments in both the electric and telephone space. Thus, the January 2019 Invoice *does not* show that BVU made a separate payment for 88 fiber attachments in the telephone space of joint use poles owned by CenturyLink *in addition to* a payment for electric attachments. Rather, BVU made *one* adjustment payment per pole on which it had one or more attachments (electric or fiber).

13. For these reasons, BVU OptiNet never paid a direct payment to CenturyLink, but BVU identified the poles on which only BVU OptiNet had attachments (no electric attachment) separately as an adjustment on the invoice sent to CenturyLink. I know this to be the case because by October 2017, BVU OptiNet had attachments on over 10,000 joint use poles (both BVU and CenturyLink poles), which included attachments on over 2,700 joint use poles owned by CenturyLink. CenturyLink's misinterpretation of the January 2019 Invoice would mean that, in 2018, BVU OptiNet had attachments on only 88 joint use poles owned by CenturyLink which is simply wrong. BVU had been providing broadband services for up to 16 years – since 2002 – and by 2018 had approximately 12,500 customers. To represent that BVU had fiber attachments on only 88 joint use poles owned by CenturyLink is incorrect and very misleading.

14. For these reasons, the January 2019 Invoice actually demonstrates that BVU paid only one adjustment payment to CenturyLink when it had one or more attachments on joint use poles owned by CenturyLink regardless of where those attachments were placed, including *paying only one* adjustment payment when BVU had *both* electric attachments in the electric space, *and* fiber attachments in the telephone space.

15. As noted above, between April, 2002 – June, 2018, there were three joint pole audits performed by CenturyLink and BVU on the joint use poles of both CenturyLink and BVU

in the BVU Service Territory. When the results of those audits were received, there were no extra attachment fees paid to CenturyLink by BVU because of the expanding BVU fiber broadband network.

16. BVU utilized the CenturyLink-owned poles under the parties' Joint Use Pole Agreement. It did not pay a separate attachment fee for fiber attachments in the telephone space of joint use poles owned by CenturyLink. Rather, BVU paid the annual pole adjustment fee, per pole, for any joint use pole on which it had one or more attachments, regardless of the location.

17. BVU continued to install Broadband equipment in the CenturyLink Telephone Space on CenturyLink poles after 2010. It continued to only pay the one attachment fee per pole, per year. This continued until at least June, 2018 when I left BVU to go to work for BrightRidge.

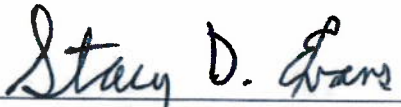
18. In 2018, BVU sold its broadband division to third-party Sunset Digital Communications. Following the sale of BVU's broadband division to Sunset Digital Communications, the fiber attachments were no longer covered by BVU's joint use pole agreement with CenturyLink. For that reason, the January 2019 Invoice attached as Exhibit 1 notes the 88 attachments to joint use poles that included fiber attachments only were assessed from "January-July 2018." The sale of BVU's fiber broadband network was finalized in August 2018. This timing further reinforces that BVU made only one adjustment payment to CenturyLink per joint use pole on which it had at least one attachment, but did not make a separate additional adjustment payment for fiber attachments in the telephone space of joint use poles where BVU already had electric attachments.

19. Based on my knowledge of the telecommunications industry in general, and in this region particularly, and as a result of my job duties with BVU and BrightRidge, I have direct, firsthand knowledge that Bristol Tennessee Essential Services ("BTES") began providing internet

and cable television services in 2005. In fact, this information is even included on BTES's public website (<https://www.btes.net/Page/about-us>). I have personally seen BTES's internet and cable attachments in the telephone space on joint use poles owned by CenturyLink in the BTES service territory.

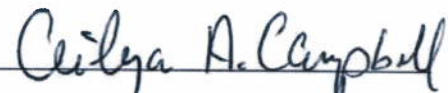
20. Based on my knowledge of the telecommunications industry in general, and this region in particular, and as a result of my job duties with BVU and BrightRidge, I have direct, firsthand knowledge that Erwin Utilities began providing fiber internet services to its customers in January 2015. In fact, this information is even included on Erwin Utilities' public website (<https://www.e-u.cc/about/>). I have personally seen Erwin Utility's fiber attachments in the telephone space on joint use poles owned by CenturyLink in the Erwin Utilities service territory.

FURTHER AFFIANT SAYETH NOT.


Stacy D. Evans

STATE OF TENNESSEE
COUNTY OF WASHINGTON

Subscribed and sworn to before me this 24th day of February, 2023.


NOTARY PUBLIC

My Commission Expires: 7/1/2025

